REMARKS

Claims 34-63 were presented for examination. Claims 34-63 are rejected. Claims 34 and 49 have been amended. No new matter has been introduced. Upon entry of the present amendment, claims 34-63 will be currently pending in this application, of which claims 34 and 49 are independent. Applicants submit that claims 34-63 are in condition for allowance.

The following comments address all stated grounds of rejection. Applicants respectfully traverse all rejections and urge the Examiner to pass the claims to allowance in view of the remarks set forth below.

CLAIM REJECTIONS UNDER 35 U.S.C. §103

I. Claims 34-39, 45-54 and 60-63 Rejected Under 35 U.S.C. §103

Claims 34-39, 45-54 and 60-63 are rejected under 35 U.S.C. §103 as unpatentable over U.S. Patent No. 6,023,722 to Colyer in view of U.S. Patent No. 6,360,270 to Cherkasova et al. ("Cherkasova"). Claims 34 and 49 are independent claims. Claims 35-39 and 45-47 depend on and incorporate all the patentable subject matter of claim 34. Claims 50-54 and 60-63 depend on and incorporate all the patentable subject matter of claim 49. Applicants respectfully traverse this rejection and submit that Colyer in view of Cherkasova fails to teach or suggest each and every feature of claims 34-39, 45-54 and 60-63, as amended.

A. Independent Claims 34 and 49 Patentable over Colyer and Cherkasova

To establish a *prima facie* case of obviousness, all the claim limitations must be taught or suggested by the prior art. Amended independent claims 34 and 49 are a method and system claim respectively. These independent claims are directed to an interface unit maximizing

throughput of a server while avoiding overload of the server. The interface unit intercepts requests from clients to a server, transmits the intercepted requests to the server, and intercepts responses to the requests transmitted by the server to the clients. These claims recite the interface unit determining that the performance of the server throughput exceeds the predetermined threshold range by monitoring responses to client requests intercepted by the interface unit. Applicants submit that neither Colyer nor Cherkasova, alone or in combination, disclose, teach or suggest each and every element of the claimed invention.

In the claimed invention, an interface unit determines that the performance of the server throughput exceeds the predetermined threshold range by monitoring responses to client requests intercepted by the interface unit. As correctly stated by the Examiner in the Office Action, Colyer fails to disclose this feature of the claimed invention. The Examiner cites Cherkasova for the purpose of suggesting that one ordinarily skilled in art might modify Colyer to determine server throughput performance by monitoring responses to client requests. However, as with Colyer, Cherkasova fails to teach or suggest this feature of the claimed invention.

Instead of teaching or suggesting an interface unit determining server throughput performance by monitoring responses to client requests intercepted by the interface unit, Cherkasova describes a resource monitor, distinct from an interface unit, determining a percentage of requests that are refused or aborted by the server (see col. 4, lines 7-12). The admission controller (14, Fig. 1) of Cherkasova, which the Examiner equates to an interface unit of the claimed invention, receives indicators from the resource monitor and not responses to client requests. In the case of client requests, the admission controller receives from the resource monitor a percentage of requests to which the server does not respond. For responses to client requests, the server of Cherkasova transmits the response directly to the client without

interception by the admission control (see "completed messages" 28, Fig. 1). Since the interface unit of Cherkasova does not intercept responses transmitted by the server to the client, Cherkasova does not monitor responses to client requests received by the interface unit as in the claimed invention. Rather than monitoring responses to client requests themselves, the admission controller monitors indicators from the resource monitor. Therefore, Cherkasova fails to teach or suggest an interface unit determining server throughput performance by monitoring responses to client requests received by the interface unit.

Because Colyer and Cherkasova, alone or in combination, fails to disclose, teach or suggest each and every element of the claimed invention, Applicants submit independent claims 34 and 49 are patentable and in condition for allowance. Claims 35-39 and 45-47 depend on and incorporate all the patentable limitations of claim 34, and claims 50-54 and 60-63 depend on and incorporate all the patentable limitations of claim Therefore, Applicants also submit that claims 35-39, 45-47, 50-54 and 60-63 are patentable and in condition for allowance.

II. Rejection of Dependent Claims Under 35 U.S.C. §103

Claims 40, 41, 55 and 56 are rejected under 35 U.S.C. §103 as unpatentable over Colyer in view of Cherkasova in further view of U.S. Patent No. 6,006,269 to Phaal ("Phaal"). Claims 42-44 and 57-59 are rejected under 35 U.S.C. §103 as unpatentable over Colyer in view of Cherkasova in further view of U.S. Published Application No. US 2002/0120743 to Shabtay et al. ("Shabtay"). Claims 40-44 depend on and incorporate all the patentable subject matter of independent claim 34. Claims 55-59 depend on and incorporate all the patentable subject matter of independent claim 49. Applicants respectfully traverse this rejection and submit that Colyer

in view of Cherkasova in further view of Phaal or Shabtay fails to teach or suggest each and every feature of claims 40-44 and 55-59.

For the reasons discussed above in connection with the rejection of independent claims 34 and 49, Applicants submit that independent claims 34 and 49 are patentable and in condition for allowance. Thus, claims dependent from claims 34 and 49 are patentable and in condition for allowance. As such, Applicants submit dependent claims 40-44 and 55-59 are patentable and in condition for allowance.

Furthermore, as with Colyer and Cherkasova, Phaal and Shabtay do not disclose, teach or suggest an interface unit determining from monitoring responses to client requests received by the interface unit that the performance of the server throughput exceeds the predetermined threshold range. Therefore, Colyer, Cherkasova, Phaal and Shabtay, alone or in combination, fail to teach or suggest each and every feature of the claimed invention.

Because Colyer in view of Cherkasova in further view of Phaal and Shabtay fails to detract from the patentability of the claimed invention, Applicants submit dependent claims 40-44 and 55-59 are patentable and in condition for allowance. Accordingly, Applicants respectfully request the Examiner to withdraw the rejection of claims 40-44 and 55-59 under 35 U.S.C. §103.

CONCLUSION

In light of the arguments discussed above, Applicants contend that each of the Examiners rejections has been adequately addressed and all of the pending claims are in condition for allowance. Accordingly, Applicants respectfully request allowance of all of the pending claims.

Should the Examiner feel that a telephone conference with Applicants' attorney would expedite prosecution of this application, the Examiner is urged to contact the Applicants' attorney at the telephone number identified below.

Respectfully submitted,

CHOATE, HALL & STEWART, LLP

Dated: January 11, 2006

/CJMcKenna/

Christopher J. McKenna
Registration No. 53,302
Attorney for Applicants

Choate, Hall & Stewart, LLP
Two International Place
Boston, MA 02110
(617) 248-5000